

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARTURO LABOY,	§
	§ No. 443, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 93003649DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: September 8, 2009  
Decided: September 28, 2009

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 28<sup>th</sup> day of September 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Arturo Laboy, filed an appeal from the Superior Court's July 14, 2009 order, which adopted the Superior Court Commissioner's June 24, 2009 report and recommendation that Laboy's postconviction motion pursuant to Superior Court Criminal Rule 61 be denied.<sup>1</sup> The plaintiff-appellee, the State of Delaware, has moved to affirm

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<sup>1</sup> Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>2</sup> We agree and affirm.

(2) The record reflects that, in February 1994, a Superior Court jury found Laboy guilty of Assault in the First Degree, Assault in the Second Degree, Stalking, Terroristic Threatening, and two related weapon offenses. He was sentenced to a total of 41½ years of Level V incarceration, to be followed by 2½ years of decreasing levels of probation. Laboy's convictions and sentences were affirmed by this Court on direct appeal.<sup>3</sup> In March 2001, the Superior Court denied Laboy's motion for sentence modification. Laboy did not appeal that decision. In 2003, the Superior Court denied Laboy's first postconviction motion. This Court dismissed Laboy's appeal from that denial.<sup>4</sup> In 2004, Laboy again moved for modification of his sentence. This Court affirmed the Superior Court's denial of that motion.<sup>5</sup>

(3) In this appeal from the Superior Court's denial of his second postconviction motion, Laboy claims that the Superior Court judge was motivated by bias when she denied his 2001 motion for sentence modification and that she should have disqualified herself from deciding his

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<sup>2</sup> Supr. Ct. R. 25(a).

<sup>3</sup> *Laboy v. State*, Del. Supr., No. 210, 1994, Veasey, C.J. (June 23, 1995).

<sup>4</sup> *Laboy v. State*, Del. Supr., No. 382, 2003, Steele, J. (Oct. 27, 2003).

<sup>5</sup> *Laboy v. State*, Del. Supr., No. 481, 2004, Berger, J. (Apr. 11, 2005).

present motion. Laboy's claim of judicial bias is based upon the following factual background. In February 2001, a courtesy copy of Laboy's motion for sentence modification was sent to the Superior Court judge who had presided over Laboy's trial, who was about to retire. That judge, in error, granted Laboy's motion. Three days later, the Superior Court judge who had assumed the retiring judge's caseload denied the motion. The State then filed a motion to vacate the order that had been granted in error. The Superior Court granted the State's motion to vacate. Laboy did not file an appeal from that order.

(4) This Court has ruled that the procedural requirements of Rule 61 must first be addressed before the merits of any postconviction claim may be considered.<sup>6</sup> Under Delaware law, a conviction becomes final on the date the mandate issues following a direct appeal.<sup>7</sup> As such, Laboy's conviction became final in 1995. His present postconviction motion, filed in April 2009, is plainly time-barred.<sup>8</sup>

(5) In addition, Laboy's motion is procedurally barred as previously adjudicated.<sup>9</sup> Laboy previously asserted his current claim in his

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<sup>6</sup> *Bailey v. State*, 588 A.2d 1121, 1127 (Del. 1991).

<sup>7</sup> Super. Ct. Crim. R. 61(m)(2).

<sup>8</sup> The previous version of Superior Court Criminal Rule 61(i)(1), which was in effect at the time of Laboy's trial and appeal, required that any motion for postconviction relief be filed within three years of the date the conviction became final.

<sup>9</sup> Super. Ct. Crim. R. 61(i)(4).

first postconviction motion and in his second motion for sentence modification.<sup>10</sup> This Court affirmed the Superior Court’s denial of both of those motions, ultimately ruling that Laboy’s claim had been “fully litigated” in his first postconviction proceeding and that the disposition of that motion had become “the law of the case.”<sup>11</sup> We conclude that, in the absence of any evidence that Laboy’s claim should be reconsidered “in the interest of justice,”<sup>12</sup> the judgment of the Superior Court must be affirmed.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice

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<sup>10</sup> *Skinner v. State*, 607 A.2d 1170, 1172 (Del. 1992) (barring relitigation of a claim that has merely been refined or restated).

<sup>11</sup> *Laboy v. State*, Del. Supr., No. 481, 2004, Berger, J. (Apr. 11, 2005).

<sup>12</sup> Super. Ct. Crim. R. 61(i)(4).